



Appeal Decision

Hearing Held on 2 November 2021

Site Visit made on 2 November 2021

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Appeal Ref: APP/H2265/W/20/3265741

Land to the rear of 182 High Street, Tonbridge TN9 1BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Churchill Retirement Living Ltd., against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/20/01254/FL, dated 5 June 2020, was refused by notice dated 27 October 2020.
 - The development proposed is redevelopment to form 35 Retirement Living apartments for older persons including communal facilities, and associated car parking and landscaping, and the repositioning of 4 existing car parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site location is described differently on the planning application form but it is described as set out above on the decision notice and appeal form. The Parties agree this to be correct location.
3. The appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. An amended proposal, for 34 apartments amongst other things, is the subject of planning application Ref TM/2021/01911/FL. Consultations have taken place and the views of interested Parties have been sought but the Council have not yet determined that application.
4. Notwithstanding the discussions at the Hearing it is clear, from the subsequently provided responses to the consultations, that prejudice to acknowledged interests could arise if I accepted the amendments for the purpose of this appeal, for example Kent County Council Highways and Transportation have now requested a contribution towards cycling provision. Accordingly I will determine this appeal on the basis of the original proposal for 35 apartments only.
5. A signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 has been provided. This offers a financial contribution towards off site affordable housing, facilities at the Warders Medical Centre/Hildenborough Medical Group and library facilities.

6. In July 2021 a revised National Planning Policy Framework (the Framework) was published. The decision notice refers to paragraphs in the former Framework; updated paragraph references were agreed at the Hearing.

Main Issue

7. The main issue is the effect of the proposed development on that part of the Town Banks Scheduled Monument which falls within the appeal site. For the purposes of this appeal I will refer to that part as The Fosse.

Reasons

8. The appeal site comprises The Fosse, which is overgrown with trees and vegetation, and a vacant area, historically part of a garden to a large house, but last used as a carpark¹. It is in an accessible location in the central area of Tonbridge. The area to the south of the Fosse would have been settled during the medieval period and residential development to its south would not, in itself, be harmful to the Scheduled Monument. Planning permission was granted on part of the site Ref TM/12/03803FL² (the town house permission). Phase 1 of that scheme, the link road to Lansdowne Road and a car park for High Street properties, has been constructed. Taking these matters into account residential development would be acceptable in principle on part of the site provided all planning policies and material considerations are satisfied.
9. Historically many towns had banks, ditches and/or masonry walls which marked the limits of the town and provided defences. They had a symbolic role in identifying the importance of the settlement. In the medieval period towns were often deliberately established next to major castles so that their owners could influence and gain from the market, trade and other functions of the developing centres.
10. Parts of the medieval town defences of Tonbridge survive in three separate protected areas as visible earthworks and below-ground remains. Together these have been designated as the Town Banks Scheduled Monument in recognition of their high historical value as a visible reminder of the original extent and enclosure of the medieval Tonbridge; the tensions and threats to such settlements at the time; and the organisational and technological skills of the society who constructed it. The Fosse runs from Stafford Road to Lansdowne Road. The second protected area runs alongside Lansdowne Road to the High Street but mainly survives as buried remains. The third protected area is south-east of St Peter and St Paul's Church and is behind gardens and its route can be glimpsed by tree tops. The enclosure of the medieval town was completed by the River Medway and the Hilden Brook.
11. Historic England identifies the particularly significant physical attributes of the Town Banks as including: the form of the bank and its impressive size; the vacant area to the east of the banks which indicates the line along which the linear defence would have continued; and the limited amount of open space around it which separates and differentiates it from later, intrusive development. The condition of The Fosse is generally unsatisfactory and

¹Certificate of Lawful Development Existing: use of land for car parking

²Construction of 9 townhouses and 3 apartments; provision of 15 car parking spaces for the residential development together with a further 9 garages, plus a further 30 spaces for the existing commercial use of 182 High Street; works to the scheduled ancient monument; associated landscaping works; and the safeguarding of land for the provision of the Lansdowne Road link road and as amended by application Ref TM/14/01354/FL

declining, with major localised problems, and in need of management. In 2013 the then English Heritage commented in relation to The Fosse that *"No one could say that the condition of the monument and the close proximity of back land car parking are satisfactory"*.

12. Archaeological investigations have been undertaken on the appeal site including to discharge conditions attached to the extant permission. These found earthworks including a bank and ditch, which seem to have varied in size and some of which has become in-filled or had material deposited on it, surviving as a buried feature. Although there are documentary references to a wall no direct evidence of such a structure has been found. The Fosse may retain further evidential value in the buried remains to add to understanding about the construction, use and abandonment of the Town Banks and it has group value with the other protected sections and the Castle
13. Today the clearest view of The Fosse, other than within the appeal site, is from the footpath between Stafford Road and Fosse Road. Here the bank is very evident and the footpath appears to traverse the line of the ditch to the north of the bank. The ditch is even more defined behind properties on Lansdowne Road as viewed from within the appeal site. However, because of the dense self-set vegetation that has grown up its original function is obscured. Its route can be identified across an open gap adjacent to Moat Villas on Lansdowne Road; from the car park areas on Bradley Street; and from the Upper Castle carpark along Annison Street mainly as the trees are visible rather than the land form itself. Views of The Fosse from the Castle Motte are restricted by trees growing on it and by intervening buildings.
14. From Lansdowne Road and the link road the immediate surrounding of The Fosse is experienced as a disused piece of land adjoining the link road with a car park to the south and modern three and four storey buildings beyond that. Given the relative land levels the bank can barely be discerned from this direction although The Fosse treeline can be seen in context with the second part of the Town Banks Scheduled Monument – itself also tree lined.
15. Some of the trees on The Fosse are unhealthy and others have shallow roots meaning they could be blown down in high winds, disturbing the earthworks and posing a risk to neighbouring property. The unmaintained appearance also attracts anti-social behaviour such as fires and littering. In addition modern development, particularly to the north, ie outside the Town Banks, severely detracts from the appreciation of its original function or scale and pose a threat to its stability and the buried remains. This is exacerbated by the lack of a clear connection to related features such as the Castle due to intervening development and the absence of interpretation facilities.
16. The proposed building would not directly encroach on The Fosse. It would be broadly 'L' shaped with the apex pointing away from The Fosse. Historic England have expressed concern that such a non-linear form of development would be harmful to the appreciation of The Fosse. However, I have seen no evidence to indicate that in medieval times development in the town would have been parallel to the Town Banks or that development would have been close to them. Accordingly I give this concern relatively little weight in the context of this appeal.
17. The building would be partly three and partly four storeys high with the fourth floor partially in the roof space. The higher elements would be furthest away

from The Fosse. However, the western parts of the building in particular would be very close to the edge of The Fosse and due to the scale, mass and siting would visually dominate it, detracting from an appreciation of its original importance as a dominant defensive feature. As the trees and other vegetation which has become established on The Fosse are intrusive elements in themselves I do not consider that the extent to which they impede inter-visibility between The Fosse and the proposed building carries much weight in the context of this appeal. There is no public access to The Fosse so views from it towards the development would not generally be available. However, the contribution that setting makes to the significance of a heritage asset does not depend on there being public access to experience the setting.

18. There would be open amenity spaces between the building and The Fosse which would help reduce the harm to the way in which The Fosse is appreciated. However, the replacement car parking spaces would encroach into the open buffer adjacent to The Fosse. I see no reason to disagree with Historic England's view that those to the east - although just outside the scheduled area - would sit across the original line of the Town Banks and thus disrupt an appreciation of its original course. I conclude that both proposed parking areas would be harmful to the way in which The Fosse is experienced and how it is appreciated. Moreover, there may be other buried archaeological interests within the proposed development area as the provided evidence indicates that only part of the site has been remediated/investigated.
19. The proposal includes a Conservation Management Plan which sets out how The Fosse would be protected during construction; that dead, diseased or unstable trees would be removed but with the majority retained; and that trees and vegetation would be managed as a secluded mixed wooded and grass area, possibly with the addition of some wild flower planting seeding.
20. Public access to The Fosse is not part of the proposal but the proposed apartments would overlook it. The provision of four explanatory panels would aid public recognition and appreciation of The Fosse, adding to the understanding of it in relation to the rest of the Town Banks and the Castle.
21. I note that Historic England would prefer to see more trees removed than proposed. However, grubbing up of tree roots would be likely to cause damage to The Fosse and some of the trees are protected by a Tree Preservation Order as well as providing a more diverse habitat than grassland alone. Even if all the aspirations of Historic England would not be met I consider that an agreed programme of management of The Fosse and increased surveillance would have some benefit in reducing destructive anti-social behaviour.
22. I conclude that due to the scale and siting of the building and the location of the car parks there would be harm to the setting of The Fosse and the way it is appreciated. However, taking account of the proposed management and the proposed explanatory panels, I consider that harm to be less than substantial.
23. As the link road has already been constructed I give its provision no weight as a benefit of the appeal proposal. There would be significant public benefits arising from the proposal in terms of: much needed additional housing for older people in specialised age friendly housing and in releasing general housing stock (the average age of residents moving in is over 79 years); the efficient use of previously developed land in an accessible location; a commuted sum of more than £330,000 for the delivery of affordable housing; economic benefits

from jobs during construction and operational phases of the development and by residents spending locally. These benefits weigh heavily in favour of the proposal given the critical need for housing for older people as identified at national level in the Framework and the Planning Practice Guidance. However, the weight given to these benefits in the context of this appeal is tempered as similar benefits could be achievable in other less harmful ways.

24. A Scheduled Monument is a designated heritage asset which, by definition, is of national importance. Even though the Ancient Monuments and Archaeological Areas Act 1979 does not impose a statutory duty equivalent to sections 66(1) or 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 the national importance of scheduled monuments is a relevant consideration. I have found that harm would be caused to the setting of The Fosse and the way in which it is appreciated. Even though that harm is less than substantial I find the public benefits as set out above would not outweigh that harm in this instance.
25. I conclude that the proposed development would have a harmful effect on the setting of The Fosse which would not be out-weighed by public benefits. Accordingly it would be contrary to paragraphs 197, 199, 200, 202, and 206 of the Framework which seek to protect heritage assets and the settings in which they are appreciated. Although not mentioned on the decision notice the proposal would also conflict with Policy CP1 of the Tonbridge and Malling Core Strategy 2007 and Policy SQ1 of the Managing Development and the Environment Development Plan Document 2010 in so far as they seek to protect historic interest.

Other Matters

26. The appeal site is in the Market Quarter Sub Area of the Tonbridge Conservation Area (the CA). The special significance of the CA includes the ancient origins of the settlement; the importance of water and associated industry, with the Medway marking the southern boundary of the medieval settlement and feeding the mills and wharfs; and its important role as a transport hub evident in the number of surviving coach houses. The medieval core has a generally tight-knit and enclosed morphology with a range of building styles and ages in contrast to the more spacious Victorian and later suburbs. These are the features/characteristics that contribute to and define the significance of the CA.
27. The appeal site is a relatively small open space which makes little contribution to the wider significance or character and appearance of the CA. The proposed building would be of a scale and design that would not be dissimilar to that of other modern buildings nearby. Due to the scale and location, the proposed development would have a neutral effect on the significance of the CA as a whole which amounts to the preservation of its character and appearance.
28. Tonbridge Castle, a Motte and Bailey Castle with a 13th Century Gatehouse, is a Grade I Listed Building and Scheduled Monument. It is some 200m to the south of the appeal site and separated from it by the built up area of Bradley Street, Annison Street and The Slade. Whilst the tops of the trees on The Fosse can be seen from the Upper Castle Car Park, existing trees on the banks of the Castle Motte and intervening buildings mean there is no intervisibility between the Castle and The Fosse. Accordingly the proposal would not harm the setting of the Castle or the way in which it is appreciated.

29. No 186 High Street is Scheduled as a Medieval Hall and is a Grade II Listed Building; Nos 184, 184A and 184B High Street are also Grade II Listed Buildings which are considered to be a later addition to the Medieval Hall. These have historical and architectural value including as a group and together form a single, yet complex, multi phased building with medieval origins. There is some intervisibility between these buildings and the appeal site. However due to the distances between them the proposed development would not harm their significance or the setting in which they are appreciated.
30. The extant permission for a building much closer to The Fosse could be implemented and is a material consideration. That scheme was held to be acceptable partly as the row reflected the linear form of The Fosse and partly due to the public benefits including the provision of the link road. I also note that the extent of building coverage and scale of the extant scheme would be less than the appeal proposal. Both proposals would cause less than substantial harm but in different ways. I do not consider that the extant permission would be such a harmful fall-back position as to justify allowing the appeal proposal.
31. There are some queries outstanding in relation to the title of the land. However, in view of my findings on the main issue it is not necessary for me to consider further the obligations offered by way of the submitted Unilateral Undertaking.
32. My attention has been drawn to recent appeal decisions. However, these do not lead me to any different conclusions in respect of the appeal before me because at Fleet APP/N1730/W/20/3261194 there were no heritage assets affected; and at Basingstoke APP/H1705/W/20/3248204 no harm to heritage assets was found. The significance of the Paddock Wood decision APP/M2270/W/3225289 relates to financial requests from Kent County Council: in view of my conclusions on the main issue I do not need to consider this further. At the Hearing the appellant confirmed that the Chislehurst decision APP/G5180/W/16/3155059 had been superseded by the more recent appeals.

Planning Balance and Conclusion

33. Applying the appropriate buffer the Parties agree that the Council can demonstrate 2.93 years of deliverable housing land supply for the purposes of this appeal. I see no reason to come to a different view. However, I conclude the most important Policies for determining this application, which relate to the protection of historic interest, are not out of date in relation to the protection of a scheduled monument. Even had I concluded differently, in terms of paragraph 11 of the Framework and the accompanying Footnote 7, the application of policies in the Framework provides a clear reason for refusing the development proposed and the so-called tilted balance does not apply.
34. In conflicting with Policies CP1 and SQ1 the proposal cannot be said to comply with the development plan taken as a whole. I find insufficient material considerations to outweigh that conflict. The appeal should be dismissed.

S Harley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Anjoli Foster Landmark Chambers

Simon Blatherwick RPS Consulting Services

Matthew Shellum Planning Issues

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Broome Principal Planning Officer

DOCUMENTS

1. Historic England Letter in relation to application TM/21/01911/FL dated 14 October 2021
2. Representations made in respect of planning application TM/21/01911/FL
3. Agreed list of conditions
4. Signed Unilateral Undertaking relating to the 35 unit scheme
5. Signed Unilateral Undertaking relating to the 34 unit scheme
6. Official Copy of the Title Plan and Register
7. Email from the Council dated 9 November 2021